IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1973

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,
Petitioner,

vs.

RONALD BRADLEY, et al.,
Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITIONS FOR WRIT OF CERTIORARI

ARGUMENT

The Plaintiffs' Memorandum in Opposition urges this Court to deny the several Petitions for Writ of Certiorari because the precise details of a plan for the desegregation of the Detroit school district are not yet before the Court, and therefore this Court would be unable to ". . .evaluate the practicalities of the local situation. . . ."[1] Petitioner submits, however, that "local practicalities" are irrelevant to the basic issue of the legal propriety or necessity for a "Metropolitan plan" of desegregation, so completely framed by the Opinion of the Court of Appeals in the following passages: [2]

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[1] Memorandum of Bradley, et al, in Opposition to Petitions for Writ of Certiorari, at page 3.

[2] Joint Appendix, at 173a.

"Under this record a remedial order of the court of equity which left the Detroit school system overwhelmingly black (for the foreseeable future) surrounded by suburban school systems overwhelmingly white cannot correct the constitutional violations herein found.

* * *

"At the outset it is obvious from what we have said pertaining to the inadequacy of any Detroit only desegregation plan that this court feels that some plan for desegregation beyond the boundaries of the Detroit School District is both within the equity powers of the District Court *and essential to a solution of this problem.*" (emphasis added).

"This problem", as perceived by the Court of Appeals, is simply that the student population of the Detroit school system is predominately black, vis a vis school districts outlying therefrom. It is therefore difficult to conceive of how additional evidentiary record as to "... the precise manner in which school district boundaries need be permeated..." and students transferred and transported, will assist this Court in its review of the lower Court's basic proposition that a racial imbalance of students in any multi-school district geographical area is, per se, unconstitutional; irrespective of intention to segregate or causal connection therewith. The Court of Appeals Opinion could not have been more clear in its declaration that there *will* be a metropolitan plan, and because the District Court's final order [3] on that issue was affirmed, review by this Court *now* is appropriate, without the necessity of considering any plan details. This case, in its present posture, presents a holding which is in square conflict with decisions of this Court and other Courts of Appeal, and has far reaching effect of an unprecedented nature. It is therefore respectfully submitted that review of the question presented at this time is not only

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[3] The District Court's Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation, as well as other relevant Orders, were certified as containing controlling questions of law under 28 USC §1292(b), and were also determined to be final under Rule 54(b), FRCP. See Joint Appendix at 113a.

proper, but essential, for the reasons set forth in the several Petitions for Writ of Certiorari. [4]

Respondents Bradley, et al, have also submitted, however, that this Court should deny Certiorari because the Court of Appeals has already ordered that Petitioner and newly added school districts will be permitted to present "... all relevant evidence necessary for decision and determination of the issues both of violation and of remedy." [5] Petitioner will be able to do this, it is argued, because the Court of Appeals did not expressly direct the District Court to *refuse* to receive such evidence. Although Petitioner is overwhelmed by Plaintiff's claimed change of attitude on the question of its participation in the District Court proceedings, [6] this is unfortunately a misleading and unrealistic analysis of the treatment which Petitioner may expect to receive. This is apparent from a review of the actual language of the Court of Appeals' remand to the District Court:

> "The District Court may consider any evidence now on file and such additional competent evidence as may be introduced by any party. *However, the District Court will not be required to receive any additional evidence as to the matters contained in its Ruling on the Issue of Segregation, dated September 27, 1971, and reported at 338 F. Supp. 582, or its Findings of Fact and Conclusions of Law on the "Detroit-only" plans of desegregation, dated March 28, 1972.* We hold that the findings of fact contained in these rulings are not clearly erroneous, Rule 52(a), Fed. R. Civ. P., but to the contrary are supported by substantial evidence." (Emphasis added).

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[4] Petitioner notes plaintiff's assertion that this Court should deny Certiorari in the name of judicial economy. Petitioner fails to perceive, however, how additional hearings, now involving 85 school districts and nearly 1,000,000 students, can result in judicial economy when the very issue petitioner requests this court to decide may obviate the necessity for such hearings, or deliniate the scope thereof so that an additional remand of this and other cases in the future will be unnecessary.

[5] Memorandum of Bradley, et al, in opposition to Petitions for Writ of Certiorari, at page 3, footnote 2.

[6] Throughout the District Court proceedings, Plaintiffs have consistently opposed any effective or meaningful participation by Petitioner. As but one example, the Conditions on Intervention, imposed upon Petitioner school districts by the District Court, (Joint Appendix, page 232a) were those proposed by the Plaintiffs and adopted verbatim by the District Court.

Thus, the Court of Appeals has effectively excluded from its direction that Petitioner be permitted to present additional evidence, any matters relating to the question of the necessity for a Metropolitan Plan of Desegregation. Judge Weick's dissenting observation on this point is particularly perceptive:

> "However, in its opinion the majority did provide for amendment of pleadings on remand, making new party defendants, for intervention, and for offering additional testimony. *These provisions are wholly illusory with respect to the issues of segregation, the 'Detroit-only Plan' and the 'Metropolitan plan', as the opinion expressly excludes these issues from reconsideration upon remand.*" (Emphasis added) Joint Appendix, at 206a.

For the reasons set forth in the Petitions for Writ of Certiorari, [7] Petitioner school districts have been and *will continue to be* denied due process of law by the Courts below, unless this Court intercedes. It is therefore respectfully submitted that should this Court concur with Plaintiff's position that this case is not yet in a appropriate posture for review, it is essential that this Court also insure Petitioner's full, fair and unrestricted participation in the ensuing proceedings before the District Court; which participation Plaintiff's have represented to this Court as being a basis for denial of Certiorari. [8] Consequently, if full review is declined at this

[7] Petition of Grosse Pointe Schools, at pg. 17. Petition of Allen Park Schools et al, at pg. 20.

[8] Petitioner appreciates Plaintiff's magnanimous statements that the District Court *should* permit presentation of additional evidence on issues of violation and remedy, "upon a proper showing". In light of the Plaintiff's previous attitude concerning Petitioners participation in the proceedings, however, and the District Court's previous treatment of the Petitioner as outlined in the Petition for Writ of Certiorari, Plaintiff's statement that the District Court *will* permit such evidence can only be characterized as falsely optimistic rhetoric, intended only to sway the Court at this moment. In addition, Plaintiffs misapprehend the requirements of due process to be afforded Petitioner; being minimally the right to participate in the proceedings "at a meaningful time and in a meaningful manner". *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965). Plaintiff's now undoubtedly realize the error in this respect, which was forced by them in the District Court, and hope to gloss over the problem by saying that *now* Petitioner will be able to present "additional evidence". Without *all* prior orders of the Court being vacated and the proceedings being recommenced on *all* issues, however, the denial of Petitioner's rights of procedural due process of law will remain unvindicated and unrespected.

time, this Court should, notwithstanding, grant Certiorari and summarily vacate *all* prior findings and orders of the District Court; remanding the case for further proceedings, with instructions as to the scope thereof and the treatment to be accorded Petitioner School districts. [9]

CONCLUSION

For the foregoing reasons, and for the reasons stated in the Petitions for Writ of Certiorari, it is respectfully submitted that Certiorari be granted to review the judgment and opinions of the Courts below.

Respectfully submitted,

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[9] Should this Court decline full review at this time, it should also be made aware of an additional problem which may be an appropriate subject in an Order of Remand. In their brief to the Court of Appeals, Petitioner school districts asserted that the District Court was without jurisdiction to order implementation of a Metropolitan Plan of Desegregation for the reason that the granting of such relief would necessarily constitute the enjoining, as a result of the unconstitutionality thereof, of the enforcement, operation or execution of certain provisions of the Michigan Constitution and statutes of statewide application, in pursuance of which all independent Michigan school districts are organized and operated. The Court of Appeals, however, chose to totally ignore this problem notwithstanding the provisions of 28 U.S.C. [illegible] *et seq*, requiring the convening of a District Court of three judges.